Supreme Court, U.S.
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No. 94-1888

In The

Supreme Court of the United States

October Term, 1995

IONA SIME, *et al.*,

Petitioners,

vs.

CITY OF ROHNERT PARK,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

BRIEF IN REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

This case presents a simple question of the precedence of federal law over that of a state. That is, should the "intent" of a local ordinance, enacted under the initiative process authorized and protected by the California Constitution, take precedence over the "intent" of a valid but conflicting contract when the federal constitutional standard permitting government impairment of contract has not been met?

Upon the electorate's approval of initiative Ordinance 494, the City adopted the Ordinance and implemented it to Park Owners. The City thus voided, or replaced,[1] the rent control program which it had agreed to in signing the Green Book contract, and breached its promise, set forth in the Purpose of the Green Book, that "so long as Parks are not in breach of this agreement no rent control or rent review ordinance affecting mobile home parks shall be considered or adopted by the City."

Section 14 of the Green Book set forth an escape clause, providing in relevant part: "This Agreement shall be automatically amended to include any change in law affecting its provisions or rent controls." So as not to make a nullity of the Purpose statement, both the trial

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[1] The City insists it did not "void" the Green Book. If it did not, a technically more correct statement might be "abrogate", or "breach" or "substantially impair." It is certain that in adopting and implementing Ordinance 494, the City did not fulfill its promise not to adopt a rent control initiative and replaced the Green Book's rent control program with that of Ordinance 494.

court and the Court of Appeal determined that Section 14 only applied to changes of law "beyond the control of the parties." (Appendix 15 and 28-29)

While Ordinance 494 was enacted by the electorate, it was to be adopted, implemented and applied by the City. Section 3-G of Ordinance 494 allows the City to decontrol "any category or classification of units." The Ordinance's terms thus saved it from violating the Contract Clause on its face. However, the City, in exercising its police power to implement the will of the electorate, failed to apply Ordinance Section 3-G to decontrol the Parks during the life of the Green Book.

The trial court thus determined the City's implementation of Ordinance 494 to the Park Owners constituted an unexcused impairment of contract in violation of Article I Section 10 of the U.S. Constitution and Article 1 Section 9 of the California Constitution.[2] (Appendix 22,

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[2] The City asserts there is no federal Contract Clause question because Park Owners' complaint alleges a violation of the obligation of contracts under the California Constitution. The Contract Clauses of federal and California Constitutions are equivalent and interpreted under the same standard. *Sonoma County Employees v. Sonoma County*, 23 Cal.3d 296, 307 (1979); *Thorning v. Hollister Sch. Dist.*, 11 Cal.App.4th 1598, 1610 (1992); also Appendix 26. Moreover, the trial court considered both state and federal case law interpreting the Contract Clause and found violation of both Article I, Section 10 of the U.S. Constitution and Article 1 Section 9 of the California Constitution. (Appendix 25-28) Even where an issue has not been pressed, if it has been passed upon below, review on certiorari is permissible. *Lebron v. National R. Passenger Corp.*, ___ U.S. ___, 115 S.Ct. 961, 130 L.Ed.2d 902, 1995 US Lexis 909, 910 (1995); citing *United States v. William*, 504 U.S. ___ (1992) (Slip op., at 4); *Virginia*

27-28) The trial court found no evidence "justify[ing] the impairment of the very deal [Rohnert Park had] entered into just three years earlier." (Appendix 27) Compare standard set forth in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 198 S.Ct. 2716, 57 L.Ed.2d 727 (1978). The Court of Appeal ignored but did not reverse this finding.

The Court of Appeal did, however, "reject[] Park Owners'[and the trial court's] interpretation of [Section 3-G] of the Ordinance as unreasonable because it would have the effect of undermining the voter initiative." (Appendix 13) Finding the Park Owners' interpretation of Section 3-G "entirely out of context," the Court of Appeal elevated the initiative's intent and purpose to control mobile home space rents within the City over the equivalent intent and purpose of the Green Book contract. (Compare Section 3-G of Ordinance 494 with Green Book § 1, Purpose, quoted at pp.17-18 of Petition.) It did so in spite of the trial court's finding that implementation of Ordinance #494 *to Park Owners* did not meet the standard required by the Contract Clause for a lawful impairment of contract, and in contravention of the federal maxim that "as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plan duty is to adopt that which will save the act." *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30, 81 L.Ed. 893 (1937); quoted in *Robertson v. Seattle Audobon Soc.*, 503 U.S. 429, 441, 112 S.Ct. 1407, 118

Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1099, n.8, 111 S.Ct. 2749, 115 L.Ed.2d 929 (1991); *Stevens v. Department of Treasury*, 500 U.S. 1, 8, 111 S.Ct. 1562, 114 L.Ed.2d 1 (1991).

L.Ed.2d 73 (1992); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Build & Const. Trades Council*, 485 U.S. 568, 575, 108 S.Ct. 1392, 1397, 99 L.Ed.2d 645 (1988) [When an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems]; *Communications Workers of Am. v. Beck*, 487 U.S. 735, 762, 108 S.Ct. 2641, 2657, 101 L.Ed.2d 634 (1988) [same]. In short, the Court of Appeal determined that the will of the electorate as expressed in initiative legislation must necessarily be preserved over the intent of a conflicting contract.

An ordinance, whether enacted by the local legislature or by the electorate under the power of the initiative, must conform to federal constitutional limitations and safeguards. *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-37, 845 S.Ct. 1459, 12 L.Ed.2d 632 (1964). Moreover, a local government, like a State judiciary, has a duty to uphold the protections afforded individuals under the U.S. Constitution. *Preferred Communications, Inc. v. City of Los Angeles*, 13 F.2d 1327, 1333 (9th Cir. 1994) ["All government officials have a duty to uphold the United States Constitution . . . "] Thus the mere fact that initiative Ordinance 494 was enacted by the electorate, did not relieve the City of its obligation to implement it in a constitutional manner. Section 3-G, under standard rules regarding the constitutional interpretation of legislation, empowered the City to do so. The Court of Appeal's determination that Section 14 applied to relieve the City of its contractual obligation, consequently, is not an *independent* or *adequate* state ground upon which to deny petitioners a writ of certiorari. Rather, the Court of Appeal's conclusion is entangled in

its decision to elevate the intent and purpose of the initiative over that of the conflicting contract, in spite of the constitutional standard for lawful impairment of contract. See *Straub v. City of Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958) [granting certiorari review of Florida Court of Appeal decision, where Florida Supreme Court denied review, and where court of appeal's decision based on state law elevated local ordinance over federal constitutional protections for speech and assembly; see also *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 167; *State Tax Comm'n v. Van Cott*, 306 U.S. 511, 514, and *Perkins v. Benquet Mining Co.*, 342 U.S. 437, 448 [indicating that certiorari is permissible where the state basis of decision is so interwoven with the federal question as not to be an independent matter.]

This case raises important concerns regarding the implementation of initiatives in the face of constitutional limitations. This court should issue a writ of certiorari to ensure the supremacy of federal constitutional protections over a government's overzealous exercise of police powers to implement the will of its electorate.

Dated: July 11, 1995

Respectfully submitted,

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